

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

Plaintiff

VS.

ELADIO SANTIAGO-SANCHEZ

Defendant

CRIM. NO. 97-0084-002 (PG)

MOTION REQUESTING A STAY IN THE PAYMENT OF FINE

TO THE HONORABLE COURT:

COMES NOW, the defendant Eladio Santiago-Sánchez, by and through the undersigned attorney and respectfully states:

1. On April 30, 1999, Defendant Eladio Santiago-Sánchez was found guilty by the jury in five (5) counts of the Indictment in criminal case number 0084-002(PG) tried before the Hon. Juan Manuel Pérez-Giménez, District Court Judge.

2. On January 29, 1999 this Honorable Court imposed among other things the following sentence on defendant Santiago-Sánchez:

a) Defendant was committed to the custody of the United States Bureau of Prisons for a term of fifty seven (57) months as to each count, to be served concurrently with each other.

b) The Defendant shall make partial restitution to the United States Government in the amount of \$108,333.33 to be paid immediately.

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c) Fine is waived or is below the guideline range, because of the Defendant inability to pay. Total amount of restitution is \$108,333.33. (see page 5 of the judgement)

3. Not satisfied with the verdict nor with the sentence, the Defendant filed in due course his notice of appeal and subsequently filed his brief to the Court of Appeals for the First Circuit. The argument of the case before the Court of Appeals is pending. Among the points raised on appeal is the restitution imposed on Defendant by this Court in the amount of \$108,333.00, since the same Government who is going to be the recipient of the payment of the restitution is the same party (the United States Government) who forfeited all of the moneys that defendant Santiago-Sánchez had, pursuant to a civil action (Civil Case 97-1320 (SEC) in rem based upon the same set of facts alleged in the Indictment.

4. On July 1, 1999, Mr, Edwin Benítez, financial litigation agent at the U.S. Attorney's office sent a letter to Mr. Santiago-Sánchez requesting payment of the restitution and the treat of extra payment of ten (10%) and fifteen percent (15%) interest. The undersigned sent Mr. Benítez a letter informing him that the case at bar was on appeal. The Government answered that no stay has been granted yet.

5. Rule 38 (c) and (d) of Criminal Procedure and Rule 8 of the Rules of Appellate Procedure grants this Honorable Court the faculty to stay order of the payment of the restitution until the matter is finally decided by the Court of Appeals. In this case the granting of the stay would be without risk

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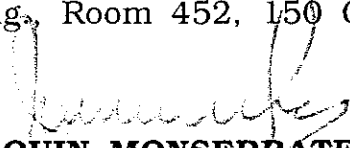
of dissipation of assets, since all of the money is under absolute control of the United States Government. This would do justice to Mr. Eladio Santiago-Sánchez, whose assets are under the total control of the United States Government, the same party who is trying to collect said restitution. The paying fines for not being able to pay would certainly dispose of whatever little money would be left, if any, after Mr. Santiago-Sánchez's serves his sentence if his conviction is upheld by the Court of Appeals. As the saying goes, it is a Catch 22 situation. The Defendant can not pay because the government has the money under its absolute control. The stay would also assist the parties (the U.S. Government and Mr. and Mrs. Santiago-Sánchez) civil case, which is on the verge of a settlement. See Civil Case No. 97-1320 (SEC).

THEREFORE, in view of the above stated arguments and in order to advance the interests of justice, it is prayed that this Honorable Court grants a stay in its Order to Defendant to pay the restitution immediately.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 11th day of August, 1999.

CERTIFICATE: I certify that on this same date, I sent an exact copy of this motion to **AUSA Aixa Maldonado, Esq.** and the Hon. **AUSA, Rebecca Vargas-Vera, Esq.** Federal Office Bldg., Room 452, 150 Carlos Chardón Avenue, Hato Rey, Puerto Rico.


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